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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,291	09/11/2003	Robert Markes	1339BGN-US	5615

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EXAMINER
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ALEXANDER, LYLE

ART UNIT	PAPER NUMBER
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1743

MAIL DATE	DELIVERY MODE
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09/04/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/659,291	<b>Applicant(s)</b> MARKES, ROBERT	
	<b>Examiner</b> Lyle A. Alexander	<b>Art Unit</b> 1743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-10 and 12-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2,4-10 and 12-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4,7 and 13-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 specifies a first portion of the waveguide connected to a first housing and a second portion "connected thereto". It is not clear what the second portion is connected to. For the purposes of examination, it will be assumed the second portion is connected to the microprocessor.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-2,4-10 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shain et al. (USP 6,027,349), Douglas et al. (USP 5,951,492), Moerman et al. (USP 6,706,159) or Stiene et al. (2004/0096959) in view of Eason et al (USP 5,186,897).

See the appropriate paragraph of the 3/29/07 Office action for the teachings of Shain et al. (USP 6,027,349), Douglas et al. (USP 5,951,492), Moerman et al. (USP 6,706,159) and Stiene et al. (2004/0096959) supra.

These references are silent to use of an optical waveguide and the claimed "destructive fluids for neutralizing substances".

Eason et al. teach in columns 2-3 lines 15-7 respectively teach optical waveguides are advantageous because they eliminate the need to separate and wash the sample.

It would have been within the skill of the art to modify Shain et al. (USP 6,027,349), Douglas et al. (USP 5,951,492), Moerman et al. (USP 6,706,159) or Stiene et al. (2004/0096959) in view of Eason et al. and use an optical waveguide to gain the above advantages.

It is well known in the art that blood is a biohazard and contact with blood should be avoided. It is also well known in the art that biohazard materials can be neutralized of most pathogens by inexpensive disinfectants. It is desirable to neutralize pathogens in blood sample to minimize the chance of infection by the technician or person(s) responsible for the disposal of blood samples. It would have been within the skill of the art to modify Shain et al. (USP 6,027,349), Douglas et al. (USP 5,951,492), Moerman et al. (USP 6,706,159) or Stiene et al. (2004/0096959) and incorporate a disinfectant to neutralize the previously analyzed blood sample to gain the above advantages.

### ***Response to Arguments***

Applicant's arguments filed 6/27/07 have been fully considered but they are not persuasive.

Applicants' amendments and remarks have clarified the 35 USC 112 second paragraph issues and those rejections have been vacated.

Applicants' state the optical waveguide of Eason et al. is not connected to a processor. First, the Office notes Eason et al. is only relied upon to teach the

advantages of an optical waveguide and the primary references Shain et al. (USP 6,027,349), Douglas et al. (USP 5,951,492), Moerman et al. (USP 6,706,159) and Stiene et al. (2004/0096959) teach the processor. Secondly, the Office believes the "fluorescence detector" taught by Eason et al. (e.g. see column 7 lines 50+) would properly read on the claimed "processor" (e.g. the fluorescence detector would process the fluorescence data).

Applicants' state none of the cited prior art teaches the claimed two housings of claim 4. The Office maintains each references has a first housing attached to the sample acquisition means and portion connected to the microprocessor which has been read on the claimed second housing .

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A. Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lyle A Alexander  
Primary Examiner  
Art Unit 1743

